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5 **IN THE UNITED STATES DISTRICT COURT**

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7 **FOR THE DISTRICT OF ARIZONA**

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9 Levanna C. Traylor, *et al.* on behalf of
10 themselves and on behalf of all others
11 similarly situated

12 Plaintiffs,

13 vs.

14 Avnet, Inc.; Avnet Pension Plan,

15
16 Defendants.

No. 08-cv-00918-PHX-FJM

**FINAL ORDER AND JUDGMENT
APPROVING SETTLEMENT AND
DISMISSING THIS ACTION WITH
PREJUDICE**

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18 The court GRANTS “Plaintiffs’ Motion for (1) Final Approval of Class Action
19 Settlement and Plans of Allocation, and (2) Class Counsel’s Attorney’s Fees and
20 Expenses and Case Contribution Payments For Plaintiffs, And Memorandum of Point and
21 Authorities in Support” (doc 194).

22
23 This litigation is a class action brought by Plaintiffs Levanna C. Traylor, Kevin R.
24 Moses, James Frederic Coy, Gwyn M. Moriarty, Linda M. Phillips, Thomas G. Small,
25 Dwayne E. Cohen, and Steve A. Dison (“Plaintiffs” or “Named Plaintiffs”) individually
26 and on behalf of the Lump Sum Class and Restricted Participant Class (the “Classes”),
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1 against Defendants Avnet, Inc. and the Avnet Pension Plan (“Plan”) (collectively,
2 “Defendants”).

3
4 Plaintiffs, on behalf of themselves and the Classes, and Defendants have agreed to
5 settle this class action suit (the “Litigation”) on the terms and conditions set forth in the
6 Class Settlement Agreement dated November 6, 2009 (the “Agreement”), the original of
7 which is filed with the Clerk of the Court and, together with all of its exhibits, is
8 incorporated in this Judgment.¹

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10 On November 25, 2009, the Court entered an Order Preliminarily Approving
11 Settlement And Approving Notice To The Classes, which directed that Notice be given to
12 the Class Members of the proposed Settlement and of a Fairness Hearing. The Court
13 made minor modifications to the Class definitions and approved the form and content of
14 the Mailed Notices directed to Lump Sum Class Members and Restricted Participant Class
15 Members and of the Publication Notice directed to the Lump Sum Class Members, which
16 were attached as Exhibits to the Agreement (collectively, the “Notices”). The Notices
17 informed the Class Members of the Settlement terms and that the Court would consider
18 the following issues at the Fairness Hearing: (i) whether the Court should grant final
19 approval of the Settlement; (ii) whether the Court should enter final judgment dismissing
20 the Litigation with prejudice; (iii) whether the Court should approve the amount of
21 attorneys’ fees, costs, and expenses to be awarded to Class Counsel; (iv) whether the
22 Court should approve any amount of compensation to be paid to the Named Plaintiffs for
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27 ¹ Unless otherwise specifically defined herein, capitalized terms used in this Final Order
28 and Judgment (“Judgment”) have the same meaning as defined in the Agreement.

1 their contributions to the Classes; and (v) any objections by Class Members to any of the
2 above.

3 In accordance with the Notices, a Fairness Hearing was held on March 5, 2010. No
4 objections to the Settlement Agreement were filed with the Court. No objections were
5 made at the Fairness Hearing.
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7 The Court, having heard argument in support of the Settlement, having questioned
8 counsel, and having reviewed all of the evidence and other submissions presented with
9 respect to the Settlement and the record of all proceedings in this case, makes the
10 following findings and conclusions:
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12 1. The Court has jurisdiction over the subject matter and the Parties to this
13 Litigation, including the Lump Sum Class Members and the Restricted Participant Class
14 Members.
15

16 2. During the period December 16, 2009 through December 17, 2009, the
17 Settlement Administrator caused the Mailed Notices of Settlement to be mailed to all
18 Lump Sum Class Members. On February 5, 2010, the Settlement Administrator filed with
19 the Court proof of mailing of those Notices to all Lump Sum Class Members. *See* Doc.
20 196.
21

22 3. During the period December 17, 2009 through December 21, 2009, the Plan
23 caused the Mailed Notices of Settlement to be mailed to all Restricted Participant Class
24 Members. On February 23, 2010, the Defendants filed with the Court proof of mailing of
25 those Notices to all Restricted Participant Class Members. *See* Doc. 197.
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1 4. On December 22, 2009, the Settlement Administrator caused the Publication
2 Notice to the Lump Sum Class to be published in the *USA Today* on a nationwide basis.
3 On February 5, 2010, the Settlement Administrator filed with the Court proof of such
4 publication. *See* Doc. 196.

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6 5. On December 4, 2009, Class Counsel also published the Notices on the
7 website dedicated to this litigation, www.traylorpensionclassaction.com, pursuant to the
8 terms of the Agreement and this Court's Order. *See* Doc. 196, ¶ 9.

9
10 6. Notice to the Class Members has been given in an adequate and sufficient
11 manner and the Notices given constitute the best notice practicable under the
12 circumstances, and were reasonably calculated to apprise interested parties of the
13 pendency of this Litigation, the nature of the claims, the definition of the Lump Sum Class
14 and the Restricted Participant Class, and their opportunity to present their objections to the
15 Settlement. The notices complied in all respects with the requirements of the Federal
16 Rules of Civil Procedure, the United States Constitution (including the Due Process
17 Clause), the Rules of this Court, and any other applicable law.

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20 7. In response to the 3,462 individually mailed notices (in addition to the
21 Publication Notice) to the Lump Sum Class, no Lump Sum Class Members filed
22 objections to the Settlement or Class counsel's attorney's fee request or the request for
23 named plaintiff case contribution payments prior to the Fairness Hearing. In response to
24 the 973 individually mailed notices to the Restricted Participant Class, no Restricted
25 Participant Class Members filed objections to the Settlement or Class counsel's attorney's
26 fee request or the request for named plaintiff case contribution payments prior to the
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1 Fairness Hearing. No objections by Lump Sum Class Members and no objections by
2 Restricted Participant Class Members were presented at the Fairness Hearing.

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4 8. After considering (i) whether the Agreement was a product of fraud or
5 collusion; (ii) the complexity, expense, and likely duration of the Litigation; (iii) the stage
6 of the proceedings and amount of discovery completed; (iv) the factual and legal obstacles
7 to prevailing on the merits; (v) the possible range of recovery and the difficulties of
8 calculating damages; and (vi) the respective opinions of the Parties, including Plaintiffs,
9 Class Counsel, Defendants, and Defendants' Counsel (who chose not to be heard), the
10 Court finally approves the Settlement, including the Plans of Allocation, in all respects as
11 fair, reasonable, adequate, and in the best interests of the Class Members pursuant to Fed.
12 R. Civ. P. 23(e). The Court did note that this was a non-adversarial process which makes
13 resolution of the fairness issue different from ordinary judging, as stated on the record.
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16 9. The terms of the Agreement, including the Release and all Exhibits to the
17 Agreement and to this Judgment, shall be forever binding on all Class Members.

18
19 10. Class Counsel have sought an award of attorney's fees, exclusive of costs
20 and expenses, in an amount equal to 25% of the Total Settlement Amount, *i.e.*, \$8.5
21 million, plus costs and expenses in the amount of \$400,000 (the "Attorney's Fees").
22 Based on the evidence presented by Class Counsel and the entire record herein, the Court
23 finds the Attorney's Fees to be fair and reasonable compensation and reimbursement in
24 light of the result obtained for the Lump Sum Class and the Restricted Participant Class;
25 the quality of Class Counsel's representation; the complexity of the litigation and novelty
26 of some of the issues presented; the skill and experience of opposing counsel; the
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1 significant time and resources expended in prosecuting this action; and the percentage-of-
2 the-fund award requested compared to the range of awards granted in similar cases in this
3 district and this Circuit. Again, the Court noted that the uncontested nature of the request
4 for fees compromised its ability to evaluate the risk involved. Thus, its ability to measure
5 the risk multiplier was necessarily limited, as more specifically stated on the record.
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7 11. Named Plaintiffs, Levanna C. Traylor, Kevin R. Moses, James Frederic
8 Coy, and Gwyn M. Moriarty, seek, in addition to their allocable shares of the Lump Sum
9 Class Settlement Fund, additional case contribution payments of \$3,000 each for the time
10 expended in pursuit of these claims, their diligence, and the benefits obtained by the Lump
11 Sum Class. The Court finds that such additional payment to each from the Lump Sum
12 Class Settlement Fund is fair and reasonable.
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15 12. Linda M. Phillips, Thomas G. Small, Dwayne E. Cohen, and Steve A.
16 Dison, seek, in addition to their allocable shares of the Restricted Participant Class
17 Settlement Fund, additional case contribution payments of \$3,000 each for the time
18 expended in pursuit of these claims, their diligence, and the benefits obtained by the
19 Restricted Participant Class. The Court finds that such additional payment to each from
20 the Restricted Participant Class Settlement Fund is fair and reasonable.
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22 13. The Court finds that the services rendered by Class Counsel and the efforts
23 of the Named Plaintiffs identified above have been necessary, appropriate, and helpful in
24 achieving and effectuating the Settlement, that the Settlement is a reasonable compromise
25 by the Plan, and that the amounts of the Attorney's Fees and case contribution payments
26 described in paragraphs 11 and 12, above, are therefore reasonable, appropriate, and
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1 necessary expenses of administering the Plan and carrying out the purposes for which the
2 Plan is maintained.

3 14. The Court recognizes that Defendants have denied and continue to deny
4 Plaintiffs' and the Class Members' claims. Neither the Agreement, this Judgment, any
5 papers related to the Settlement, nor the fact of Settlement shall be used as an admission
6 of the Defendants, or any other person, of any fault, omission, mistake, or liability, and
7 shall not be offered as evidence of any claimed liability in this or any other proceeding.
8 Evidence of the Agreement and this Court's Orders approving same shall be admissible
9 only in proceedings to enforce the Agreement or this Judgment, but not as an admission of
10 liability in the underlying Litigation.
11

12 It is, therefore, ORDERED, ADJUDGED, AND DECREED that:
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14 1. The Parties shall carry out all the terms of the Agreement, including the
15 payment of the Individual Net Settlement Benefits to the Lump Sum Class Members and
16 the Restricted Participant Class Members, in accordance with the terms of the Agreement.
17 The Court finds the allocation of the Total Settlement Amount to be fair, reasonable,
18 adequate, and in the best interests of the Class Members.
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20 2. Releases:

21 A. Each Releasor is bound by this Judgment and, as a result of it, has
22 fully, finally, and forever released, acquitted and discharged the Released Parties
23 from the Released Claims. As used herein:
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25 "Releasors" means collectively all of the Named Plaintiffs in the Litigation
26 and all members of the Lump Sum Class and Restricted Participant Class.
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1 “Released Parties” means Defendants, together with their fiduciaries,
2 officers, employees, directors, predecessors, successors, counsel, actuaries,
3 agents, and other affiliated parties.

4 “Released Claims” means any and all past, present and future causes of
5 action, claims, damages, awards, equitable, legal, and administrative relief,
6 interest, demands or rights that are based upon, related to or connected with,
7 directly or indirectly, in whole or in part, the allegations, facts, subjects or
8 issues that have been, could have been, may be or could be set forth or
9 raised in the Litigation, including but not limited to any and all “whipsaw”
10 claims, claims that participants are entitled to lump sum payments in excess
11 of their notional account balances, claims relating to the availability or
12 unavailability of lump sum payments or other benefit distributions prior to
13 normal retirement age, claims alleging that the term Cash Balance Account
14 as used in the Plan means something other than a participant’s notional
15 account balance, claims relating to the conversion of the Plan to a cash
16 balance plan, claims of age discrimination relating to the calculation of
17 benefits, claims relating to the lawfulness of the Plan’s interest crediting
18 rates, claims relating to disclosures or communications relating to the Plan
19 that Class Members did or did not receive, claims relating to the content of
20 any Mailed Notice, Publication Notice, benefit election form, or related
21 disclosure distributed in connection with this Settlement, and claims relating
22 to the administration of the Lump Sum Class Settlement Fund or the
23 calculation of Individual Net Settlement Benefits. Notwithstanding the
24 foregoing, Released Claims do not include any claim (an “Individual
25 Claim”) that a Named Plaintiff could not have asserted on behalf of a Class
26 Member, such as a claim that an individual Class Member’s account balance
27 was incorrectly calculated by reason of a factual error particular to that
28 Class Member, provided that Effective Notice is given. Effective Notice
means individual written notice to Class Counsel and Defendants’ Counsel
of such claim and the grounds therefor, received no later than the deadline
set by the Court for objecting to the Settlement. Any Individual Claim for
which Effective Notice is not provided shall be included as a Released
Claim. This release is intended to be construed broadly. Notwithstanding
the foregoing, Released Claims do not include a claim that seeks to enforce
the obligations imposed in this Settlement.

24 B. Releasors, without limitation, are precluded, estopped, and forever
25 barred from bringing or prosecuting in the future any claim or cause of action
26 released in the preceding subparagraph.
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1 C. Releasors have acknowledged that they are releasing claims that are
2 known and unknown, suspected and unsuspected, and discovered and
3 undiscovered, and are aware that they may hereafter discover legal or equitable
4 claims or remedies presently unknown or unsuspected, or facts in addition to or
5 different from those which they now know or believe to be true, including those
6 with respect to the allegations and subject matters in the Litigation. It is the
7 intention of Releasors to fully, finally, and forever settle and release all such
8 matters, and all claims and causes of action relating thereto which exist, hereafter
9 may exist, or might have existed (whether or not previously or currently asserted in
10 the Litigation).

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13 D. Releasors have expressly acknowledged certain principles of law
14 applicable in some states, such as Section 1542 of the Civil Code of the State of
15 California, which provide that a general release does not extend to claims that a
16 creditor does not know or suspect to exist in his favor at the time of executing the
17 release, which if known by him must have materially affected his settlement with
18 the debtor. Notwithstanding the choice of law provision in the Agreement, to the
19 extent that California or other law may be applicable and enforceable, Releasors
20 agree that the provisions of Section 1542 of the Civil Code of the State of
21 California and all similar federal and state laws, rights, rules, and legal principles
22 of any other jurisdiction that may be applicable here, are knowingly and voluntarily
23 waived and relinquished by Releasors, and Releasors acknowledge that this
24 provision is an essential term of the Agreement and this Release.
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1 E. Releasors have agreed that no third-party shall bring any Released
2 Claims on behalf of any Releasor against any Released Party. Should any third-
3 party do so, Releasors shall take all necessary action to secure the dismissal with
4 prejudice of any such claim.

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6 F. Nothing in this Release shall preclude any action to enforce the terms
7 of the Settlement.

8 G. This Release may be raised as a complete defense to and will
9 preclude any action or proceeding that is encompassed by this Release. The Parties
10 intend that the terms of this Release are to be broadly construed in favor of the
11 Released Parties and in favor of the complete resolution of all Released Claims.
12

13 3. Except as otherwise provided in the Agreement and this Judgment, Plaintiffs
14 and the Class Members shall take nothing in this Litigation and the Court hereby
15 dismisses the claims of Plaintiffs and the Class Members against Defendants with
16 prejudice and without costs.
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18 4. Class Counsel is entitled to be paid Attorney's Fees in an amount equal to
19 25% of the Total Settlement Amount, *i.e.*, the amount of \$8.5 million, and to costs and
20 expenses in the amount of \$400,000 from the Total Settlement Amount to be paid as
21 expenses of the Plan in accordance with the payment terms of the Agreement.
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23 5. As set forth in the Settlement Agreement and per the disclosures made to
24 Lump Sum Class members, *see* Doc. 195 ¶ 18, the Settlement Administrator is authorized
25 to assess, against the Lump Sum Class's proceeds up to \$100,000 to cover the amount of
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1 total settlement administration. Class counsel shall be responsible directly to the
2 Settlement Administrator to make up any difference.

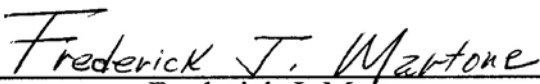
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4 6. Named Plaintiffs, Levanna C. Traylor, Kevin R. Moses, James Frederic
5 Coy, and Gwyn M. Moriarty are each awarded, in addition to their allocable shares of the
6 Lump Sum Class Settlement Fund, an additional \$3,000 as compensation for their
7 contributions to the Lump Sum Class recovery, to be paid from the Lump Sum Class
8 Settlement Fund in accordance with the payment terms of the Agreement.

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10 7. Named Plaintiffs Linda M. Phillips, Thomas G. Small, Dwayne E. Cohen,
11 and Steve A. Dison, are each awarded, in addition to their allocable shares of the
12 Restricted Participant Class Settlement Fund, an additional \$3,000 as compensation for
13 their contributions to the Restricted Participant Class recovery, to be paid from the
14 Restricted Participant Class Settlement Fund in accordance with the payment terms of the
15 Agreement.

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17 8. Without affecting the finality of this Judgment in any way, this Court will
18 retain continuing jurisdiction for a reasonable period over all Parties and Class Members
19 solely for purposes of enforcing this Judgment and, pursuant to it, the Settlement, and may
20 order any appropriate legal or equitable remedy necessary to enforce the terms of this
21 Judgment and/or the Settlement.

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23 9. This is a final and appealable judgment.

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25 Dated this 13th day of April, 2010.

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27 
28 Frederick J. Martone
United States District Judge